

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: Group Art Unit: 2856
MASSIMO BERGAMASCO et al Examiner: R. Raevis
Serial No.: 10/540,916 MAIL STOP AFTER FINAL
Filed: July 21, 2005
For: GONIOMETRIC SENSOR

REQUEST FOR WITHDRAWAL OF FINALITY OF OFFICE ACTION

Honorable Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

The Office Action of July 5, 2007 immediately followed a Request for Continued Examination filed on April 16, 2007, which was filed together with an Amendment including substantial amendments to claim 14.

The present Office Action was made final on the grounds that "[A]ll claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application."

This statement is clearly contradicted by the remainder of the present Office Action. Thus, the statement requires that had the amendments been previously entered, all claims would have been finally rejected. However, this did not occur.

In the previous (final) Office Action, claims 14, 15, 18 and 19 were rejected under 35 USC 102(b) over Slocum, and claims 14, 18 and 19 were rejected under 35 USC 102(b) over Danisch. In the present Office Action, the rejections over both of these references were withdrawn, *based on the*

amendments made to claim 14. Indeed, the underlined claim language cited at the bottom of page 3 of the present Office Action was the language added to claim 14 after the previous final Office Action.

Thus, had the amendments to the claims been entered in the previous application, all claims would not have been finally rejected on the grounds and the art of record; two of the rejections would have been withdrawn, as they were in the present application.

Hence, the finality of the rejection is clearly improper under MPEP 706.07(b), and withdrawal of the finality of the Office Action of July 5, 2007 is requested.

Because this paper is being filed at the conclusion of the statutory period, it is being filed together with a Request for Continued Examination. Should this request to withdraw the finality be granted, the Request for Continued Examination will be unnecessary and improper, and should be withdrawn, and a refund of the RCE fee is requested.

This request for withdrawal was discussed with the Examiner by telephone on January 7, 2008.

Respectfully submitted,



Ira J. Schultz
Registration No. 28666
Attorney for Applicants
(703)837-9600, ext. 23